



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

MATTHEW ELMORE,
Plaintiff,

vs.

COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION and SOUTH CAROLINA
DISABILITY,
Defendants.

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CIVIL ACTION NO. 6:20-02946-MGL-KFM

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THE ACTION WITHOUT PREJUDICE**

Plaintiff Matthew Elmore (Elmore) filed this lawsuit against the Commissioner of Social Security and South Carolina Disability alleging he has been receiving mental health treatment for several years and seeks disability because of pain in his shoulders, hips, and head. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the action be dismissed without prejudice in accordance with Fed. R. Civ. P. 41(b) based on Elmore's failure to prosecute. The Magistrate Judge filed the Report in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 19, 2020, but Elmore failed to file any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court the action is **DISMISSED WITHOUT PREJUDICE** in accordance with Fed. R. Civ. P. 41(b) based on Elmore’s failure to prosecute. All pending motions, thus, are **RENDERED AS MOOT**.

IT IS SO ORDERED.

Signed this 10th day of November, 2020, in Columbia, South Carolina.

/s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

